

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of THOMAS WAYNE KEMPER,
CHRISTOPHER J. KEMPER, PATRICK ALLEN
KEMPER, and EMALEE ELIZABETH KEMPER,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JEREMY KEMPER and SHERI KEMPER,

Respondents-Appellants.

UNPUBLISHED
June 13, 2006

No. 264531
Missaukee Circuit Court
Family Division
LC No. 04-005815-NA

Before: O’Connell, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Respondents appeal as of right from the trial court order terminating their rights to the four minor children under MCL 712A.19b(3)(b)(i), (b)(ii), (g), and (j). We affirm.

The trial court did not clearly err by finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); MCL 712A.19b(3). The record amply supports the trial court’s finding that respondent father inflicted physical and emotional abuse on the minor child Thomas over a period of years. We accord special deference to the trial court’s determinations of witness credibility, *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989), and find no reason to believe that the trial court erroneously credited the testimony of the child’s teacher and social worker. They personally observed suspicious bruises and injuries on the child’s face and neck and received numerous disclosures of severe abuse throughout their time with him. Thomas also disclosed abuse in a psychological evaluation in January and February 2004, and when hospitalized in March and April 2004. According to foster care worker Steve Loring, respondent father on a single occasion admitted often holding the children against the wall by their faces. Extensive evidence documented respondent father’s explosive temper, which caused experienced and trained professionals to react with fear. The evidence further indicated that respondent father continues to be impulsive and immature, and according to his own therapist has a “long way to go.” According to his psychological evaluation, respondent father’s prognosis for changing was extremely poor, and “[a]t the minimum he needs to acknowledge abuse of his children” Except on a single occasion to

Steve Loring, respondent father steadfastly denied that his behavior was abusive, so he naturally demonstrated reluctance (and ultimately failed) to modify his parental approach. His treatment of Thomas is also evidence that he would treat the other children similarly. *In re Laflure*, 48 Mich App 377, 392; 210 NW2d 482 (1973); *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001). We are not left with the impression that the trial court erred by finding a reasonable likelihood that the children would suffer physical injury if returned to the care of respondent father. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). The trial court did not clearly err by terminating respondent father's parental rights under MCL 712A.19b(3)(b)(i).

We are equally unpersuaded that the trial court erred when it found that respondent mother failed to protect Thomas from injury, and that the children were likely to suffer further injury if returned to her care. MCL 712A.19b(3)(b)(ii). The fact that the injuries to Thomas frequently left physical marks, to the point where Thomas's face began to show permanent discoloration, eliminates any possibility that respondent mother was unaware of the physical abuse. Yet, over a period of years, respondent mother did not remove the children from their father and encouraged Thomas to deny the abuse. The evidence clearly indicated that respondent mother aligned herself with respondent father and chose to defend and protect him to the exclusion of protecting her children. She never seriously entertained any idea of removing herself or the children from his control. At trial, respondent mother continued a pattern of denial that had been marked in her earlier psychological evaluation. She continued to deny that respondent father ever abused the children or that he ever engaged in any sexual impropriety, even though the latter was testified to by three individuals who visually witnessed the conduct. Respondent mother characterized as "just a normal Jeremy blowup" an explosive episode in which respondent father grabbed and held the minor child Christopher, blocked a doorway, and issued loud profanities in a standoff that lasted approximately 15 minutes, and which left an assistant church pastor severely shaken. Despite evidence that all four children exhibited posttraumatic stress disorder, respondent mother insisted that the children are used to their father being agitated and it did not affect them at all. Under these circumstances, we are left not with the impression that the trial court erred by finding that there was a reasonable likelihood that the children would suffer physical injury in the future if placed in the care of respondent mother. *In re Terry, supra*.

The evidence was clearly sufficient to show that both respondents failed to provide proper care and custody for the children and that they would be unable to do so within a reasonable time. MCL 712A.19b(3)(g). The evidence of respondent father's severe, long-term physical abuse of Thomas, the frequent injuries to all of the children, and respondent father's frequent blowups, together with respondent mother's pervasive failure to protect the children, amply establish the failure to provide proper care and custody. Both parents denied that the children were abused and consequently failed to take precautionary measures against future abuse. Respondent mother consistently aligned herself with respondent father and defended him at the expense of her children's safety and welfare, so there is no reasonable likelihood that the parents will be able to provide proper care and custody for the children in the reasonable future. MCL 712A.19b(3)(g). Likewise, based upon the same evidence, it is more than reasonable to

conclude that the children would be harmed if returned to the home, MCL 712A.19b(3)(j), and the trial court did not clearly err in so finding. See *In re Laflure, supra*; *In re AH, supra*.¹

Finally, the trial court did not clearly err by finding that termination of the respondents' parental rights was not clearly contrary to the best interests of the children. MCL 712A.19b(5). All four of the children exhibited posttraumatic stress disorder. Given the severe abuse, respondents' failure to react to it, and especially considering that respondent mother encouraged Thomas to deny the abuse that has been visited on him, they are absolutely incapable of meeting Thomas's extensive and urgent needs. Theresa Gibson, who was Thomas's school social worker during the three academic years when he was in a classroom for severely emotionally impaired children, testified that being told to lie by a caregiver would give a child a warped sense of reality. She opined that this is the basis for Thomas's conduct disorder and increasing diagnoses of sociopathic behaviors. Ms. Gibson noted that Thomas has seen success when in a supportive environment. He needs emotional support and knowledge that someone else is providing for his safety. The therapist for the three youngest children noted that it appeared that the older the child, the more traumatized the child was, with Emalee exhibiting the least damage. Foster care worker Steve Loring testified that the three youngest children have experienced substantial, but fragile, progress while in foster care. It appears from the exhaustive evidence that the only chance for the children to grow and develop normally is outside of the care of their parents. Therefore, the trial court did not clearly err by finding that termination of the respondents' parental rights was not clearly contrary to the children's best interests.

Affirmed.

/s/ Peter D. O'Connell
/s/ William B. Murphy
/s/ Kurtis T. Wilder

¹ The record also contains evidence that respondent father hit and choked the minor child Christopher, that he "slugged" respondent mother while she was holding the infant Emalee, and that he hit Emalee's leg with his elbow because she was crying.